

REMARKS

By this Amendment, Applicants have cancelled claims 94, 104, 109-115, 117-125, 128, 129, 141, 142, 143, 152, 159-162. Accordingly, claims 89, 92-93, 95-99, 102-103, 105-108, 138-140, 144-151 and 153-158 are presently under consideration. A marked-up version of the amendments is attached hereto.

In response to paragraphs 3 and 4 of the Official Action, the applicant respectfully directs the Examiner to the Application Data Sheet that applicant filed with the present continuation application on April 9, 2001. Pages 5-6 of the Application Data Sheet contained a specific reference to the prior application to which priority is claimed.

In response to paragraph 5 of the Official Action, applicant respectfully disagrees with the Examiner's rejection of the claims as directed to non-statutory subject matter. Each of the claims in the present invention is directed to an electronic auction. An electronic auction is not a mere "abstract" idea, as the Examiner now suggests. Moreover, there is no requirement that the claims be directed to "technological arts," as the Examiner has suggested. The law is clear and well settled that business methods, in and of themselves, constitute statutory subject matter. The Examiner's rejection of the claims under 35 U.S.C. §101 should therefore be withdrawn.

In paragraph 9 of the Official Action, the Examiner asserted that the specification fails to support the limitation "the first time interval" not equal to "the second time interval." The applicant respectfully disagrees, and refers the Examiner to p. 29, lines 13-14 of the specification, which explicitly recites this feature.

In response to the Examiner's indefiniteness rejections raised in paragraphs 11-12 of the Official Action, applicant notes that amendments have been made to, for example, claim 89, which more clearly tie the sponsor and bidder to the claimed auction process.

Turning to the Examiner's rejection of the previous claims as being anticipated by the Newsbite reference, applicant respectfully submits that each of the claims (including the claims amended herein) is distinguishable over the Newsbite reference. The portion of the Newsbite reference relating to auction overtime is as follows:

Once an auction is started on an item, it runs 24 hours a day, seven days a week and lasts between 3 and 14 days. If any bidding occurs in the final 10 minutes, the auction is extended in 10-minute increments - - the equivalent of the "going once, going twice" period found in real auctions. (Emphasis supplied).

It is well known that the "going once, going twice" period in auctions refers to a period wherein only submission of a new market leading bid can cause the auction to go into overtime. It is counter-intuitive to suggest that, in the "going once, going twice" period in typical auctions, the submission of a behind market bid would cause the bidding period to be extended. In view of this, it is clear that the Newsbite reference fails to teach the triggering of overtime in an auction based on receipt of a behind market bid during a first time interval, as required by each of applicant's pending claims.

In view of the above, it is believed that all pending claims represent patentable subject matter over the cited prior art, either alone or in combination. Applicants respectfully request the Examiner's consideration and examination of the application and timely allowance of the pending claims.

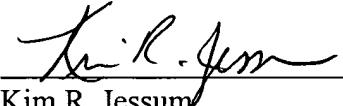
PATENT
Attorney Docket No.: 046700-5004-12
Application No.: 09/828,731

EXCEPT for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application, including fees under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time, fees, or credit any overpayment to Deposit Account 50-0310. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).

Respectfully submitted,

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MARKED-UP VERSION UNDER 37 C.F.R. § 1.121 (C)(1)

Please amend claims 89, 95-99, 105-108, 138, 140, 151, 153-154 as follows:

89. A method to control overtime in an electronic auction, comprising:

- (a) defining a first time interval corresponding to at least a portion of time during which bids are submitted to the auction for a first lot defined at least in part by a buyer, a second time interval, a first overtime condition and a first closing time for the first lot, [the first time interval not being equal to the second time interval] wherein the first closing time is at least initially defined as a specific scheduled closing time;
- (b) determining whether the first overtime condition occurs during the first time interval, wherein the first overtime condition comprises receiving at least one behind market bid for the first lot; and
- (c) extending the first closing time using the second time interval in accordance with the determination;
wherein [an auction] a sponsor of the auction and at least one bidder participating in the auction are coupled electronically over a communication network during the auction; and
wherein the first closing time corresponds to an end of the first time interval if the first closing time is not extended in step (c), and the first closing time corresponds to an end of the second time interval if the first time interval is extended in step (c).

95. The method of claim 89, wherein an overtime extension is triggered if an amount of the [submitted] at least one behind market bid is within a predetermined amount of another bid for the first lot.

96. The method of claim 89, wherein an overtime extension is triggered if the [submitted] at least one behind market bid is within a predetermined rank of another bid for the first lot.

97. The method of claim 89, wherein an overtime extension is triggered if the [submitted] at least one behind market bid is within a predetermined percentage of another bid for the first lot.

98. The method of claim 89, wherein an overtime extension is triggered if [a bidder submitting] the at least one behind market bid is received from [a bid is] an incumbent supplier.

99. A computer-readable medium for controlling overtime in an electronic auction, the medium comprising instructions which, when executed by a processor, cause the processor to perform the following steps:

(a) defining a first time interval corresponding to at least a portion of time during which bids are submitted to the auction for a first lot defined at least in part by a buyer, a second time interval, a first overtime condition and a first closing time for the first lot, [the first time interval not being equal to the second time interval] wherein the first closing time is at least initially defined as a specific scheduled closing time;

(b) determining whether the first overtime condition occurs during the first time interval, wherein the first overtime condition comprises receiving at least one behind market bid for the first lot; and

(c) extending the first closing time using said second time interval in accordance with the determination;

wherein [an auction] a sponsor of the auction and each bidder participating in the auction are coupled electronically over a communication network during the auction;

wherein the first closing time corresponds to an end of the first time interval if the first closing time is not extended in step (c), and the first closing time corresponds to an end of the second time interval if the first time interval is extended in step (c).

105. The computer-readable medium of claim 99, wherein [a received bid triggers] an overtime extension is triggered if [an amount of the received bid] the at least one behind market bid is within a predetermined amount of another bid for the first lot.

106. The computer-readable medium of claim 99, wherein [a received bid triggers] an overtime extension is triggered if [the received bid] the at least one behind market bid is within a predetermined rank of another bid for the first lot.

107. The computer-readable medium of claim 99, wherein [a received bid triggers] an overtime extension is triggered if [an amount of the received bid] the at least one behind market bid is within a predetermined percentage of another bid for the first lot.

108. The computer-readable medium of claim 99, wherein [a received bid triggers] an overtime extension is triggered if [the bidder submitting the bid] the at least one behind market bid is received from an incumbent supplier.

138. A method to control overtime in an electronic auction, comprising:
defining a first time interval, a second time interval, a first overtime condition and a first closing time for a lot defined at least in part by a buyer [, the first time interval not being equal to the second time interval], wherein the first closing time is at least initially defined as a specific scheduled closing time;

determining whether the first overtime condition occurs during the first time interval, wherein the first overtime condition comprises receiving at least one behind market bid for the first lot; and

extending the first closing time using the second time interval in accordance with the determination.

140. The method of claim 138, wherein an overtime extension is triggered if an amount of [a] the at least one behind market bid is within at least one of a predetermined amount, a predetermined rank, and a predetermined percentage of another bid for the lot.

151. A machine-readable medium for controlling overtime in an electronic auction, the medium comprising instructions which, when executed by a processor, cause the processor to:

define an overtime triggering interval, an extension time interval, an overtime condition and a closing time for a lot defined at least in part by a buyer, [the overtime triggering interval not being equal to the extension time interval] wherein the first closing time is at least initially defined as a specific scheduled closing time;

determine whether the overtime condition occurs during the overtime triggering interval, wherein the first overtime condition comprises receiving at least one behind market bid; and extending the closing time using the extension time interval in accordance with the determination.

153. The machine-readable medium of claim 151, wherein the overtime condition occurs when an amount of [a received] the at least one behind market bid is within at least one of a predetermined amount, a predetermined rank, and a predetermined percentage of another bid for the lot.

154. The machine-readable medium of claim 151, wherein the overtime condition occurs if [a received] the at least one behind market bid is submitted by an incumbent supplier.